



POLICE DEPARTMENT

March 9, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Craig Matthews
Tax Registry No. 919360
Patrol Borough Bronx Specialized Units
Disciplinary Case No. 2012-8353

The above-named member of the Department appeared before me on July 25, and September 16, 2014, charged with the following:

1. Said Police Officer Craig Matthews, while assigned to the 42nd Precinct, on or about May 19, 2012, having become aware of or receiving an allegation of corruption or other misconduct involving a member of the service, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Pages 1 and 2 ALLEGATION OF CORRUPTION AND OTHER
MISCONDUCT AGAINST MEMBERS OF THE
SERVICE

2. Said Police Officer Craig Matthews, while assigned to the 42nd Precinct, on or about May 19, 2012, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Police Officer Matthews failed to prepare a complaint report after receiving an allegation of a possible burglary.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

The Department was represented by Jamie Moran, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1. The Assistant Department Advocate moved to dismiss Specification No. 2, therefore it is recommended that Specification No. 2 be dismissed.

SUMMARY OF EVIDENCE PRESENTED

Introduction

The following is a summary of the facts. On May 19, 2012, Respondent was working as the telephone switchboard operator (TS) at the 42 Precinct Station House. His duties included handling the switchboard, incoming calls, account for and voucher property, monitor 311 calls and dispatch jobs. Person A, two days before, had a search warrant executed at her home. Her then boyfriend, Person A, was arrested in her apartment for guns and drugs. When Phin arrived at her residence, she saw only two officers who remained in her apartment. She was detained and later taken into police custody.

Upon her release the next night on May 18, 2012, Phin went to the station house and informed the person who was there that she was released from police custody and attempting to get the keys to her residence. The officer advised her to go back home and make sure that the lock was from the Police Department and not from the New York City Housing Authority (NYCHA). Phin checked with the Police Service Area and NYCHA and none of the entities had her keys. Since it was late, Phin called back the 42 Precinct on the morning of May 19, 2012, and spoke with Respondent.

After a thorough investigation, Respondent went through the vouchers related to Phin's case and realized that the house keys had been erroneously vouchered as arrest evidence, rather than for safe keeping. Phin was contacted and told to return to the station house because her keys were located. Phin retrieved the keys at the station house and thanked Respondent for his help.

When Phin went to her residence with the keys, she discovered several items missing from her residence including two television sets, video games, a laptop, cell phone, and a bank card. Phin called the station house to ascertain whether her items had been confiscated during the execution of the search warrant. Phin was told to call 911. When Phin called 911, she was told to go back to the station house and to file a complaint. Phin suspected that the two officers who remained in her apartment following the execution of the search warrant had something to do with her stolen property. Phin went back to the station house and spoke to the TS operator. She overheard the sergeant at the desk state that he did not want to deal with her. The police officer, she dealt with, who she believed to be Respondent, gave her the telephone number to the Internal Affairs Bureau (IAB) and explained what IAB was. Phin was told in sum and substance that if she suspected the police, she should contact IAB. Phin later contacted IAB and was given a log number.

The two issues in this matter are: 1) whether Respondent, having become aware of an allegation of corruption or misconduct involving a member of the service did fail and neglect to notify IAB as required; and 2) whether Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he failed to prepare a complaint report after receiving an allegation of a possible burglary.

The Assistant Department Advocate moved to dismiss the second allegation at the commencement of the trial.

The Department's Case

The Department called Olyn Phin and Lieutenant Jennifer Nakashima as witnesses.

Olyn Phin

Phin is a 30-year old receiving clerk at [REDACTED] in Manhattan. She resides [REDACTED] with her three children. The father of her children is Person A. On or about May 17, 2012 about 12:30 p.m., Phin received a phone call from the police from [REDACTED]'s cell phone number indicating that Person A was being arrested and that she needed to pick up her children. Phin immediately called her cousin to pick up her children and she left work. She eventually proceeded to go home. When she arrived, she met two police officers in her residence. She observed that the door was damaged. She was told to stand there and within ten minutes of her arrival, she was placed in handcuffs and taken into police custody. She was not released until the following day, Friday May 18, 2012 around 8:30 p.m.

While in police custody, Phin received a voucher which allowed her to pick up the keys to her apartment. Phin testified that she then went to the 42 Precinct Station House to pick up the keys to her apartment which could not be located. After back and forth between the Department and the Housing Authority she gave up for the night. The next morning Phin spoke with Respondent over the phone about the situation. A short time later Phin received a call from Respondent who was working the TS at the precinct

and advised her that he had her keys. She returned to the station house and saw Respondent who she thanked for locating her keys. Phin returned home.

Once she opened the door, Phin realized that two television sets were missing; some of her son's games, her laptop, cell phone and a bank card were also missing. Phin thought immediately that the two police officers who were left in her apartment had something to do with the missing items. She called the station house and spoke with Respondent. She asked him if any of her items were confiscated in the raid and Respondent told her no and that all the Department had for her was the key. He advised her to call 911. Phin called 911 and she was advised to go the station house and make a report about her stolen items. She called the station house before going and she spoke to Respondent again. He told her to come in if that was the advice that she received.

Phin arrived at the station house. She only saw Respondent and a sergeant behind the desk. She spoke to Respondent who went to the desk. She overheard the sergeant say that he did not want to deal with her. Respondent came over to her and handed her a piece of paper with the number to IAB on it. When she inquired what that was, Respondent replied, "IAB. If you believe the cops did it, call them." He explained to her what IAB stood for. Phin thought this was strange that she had to report to the station house after calling 911. She said that she heard when people's houses were burglarized, the police come to them and "do [dust for] finger prints" and make a report. Phin stated that she contacted IAB and was given a file number. They came to her home the next day to see what was missing.

Phin testified that the charges related to her arrest on May 17, 2012 were dismissed. She said she was never arrested prior to that date or subsequent to it. She had

decided to sue the City of New York for the false arrest. She said although she had two hearings on the matter, the case had not gone to trial yet in the Bronx.

During cross-examination, Phin acknowledged that her lawsuit addressed her arrest as part of the search warrant, not what happened with IAB and the key to her apartment. She explained that she is not suing Respondent, but his name is mentioned in the lawsuit as the person who gave her the key to the apartment. She did not know what she was charged with in the criminal case. She knew that drugs and a gun were recovered from her house. She had never seen the gun and drugs in her apartment. She explained that Person A was her boyfriend at the time of the incident. She described the relationship as an "on and off" one. She further explained that Person A would stay over a few nights a week to watch the kids because she worked, but he did not live with her.

With respect to her criminal case, Phin said she appeared in court every three months for a year before her case was eventually dismissed when Person A took a plea on the gun and drugs. She said she no longer has a relationship with him because the Administration for Children's Services (ACS) issued an "Order of Protection" against him.

Phin testified that she was trying to move to another apartment given the burglary, but housing said they needed a police report from her. Phin said every time she requested a complaint report, she was told by IAB investigator, Lieutenant Jennifer Nakashima that she could not get one because she accused the police of stealing her items and IAB investigates police officers. Phin explained that even when her case was closed, she was never able to obtain a complaint report for the items stolen from her apartment.

Lieutenant Jennifer Nakashima

Nakashima is a 20-year member of the Department currently assigned to the IAB Command Center. Prior to that, in May 2012 she was assigned to IAB Group 21 in the Bronx as a team leader. She was assigned to Phin's case which involved a missing property allegation and failure to take a report. The investigation concluded that there was no evidence concerning the officers stealing items. As part of the investigation, Nakashima interviewed four civilians: three housing workers and Phin; and five uniformed members of the service: Respondent, Police Officer Tavares, Police Officer Richards, Sergeant Miller and Sergeant Rodriguez.

Nakashima explained that Phin called 911 alleging that items were missing from her apartment. As a result of her investigation, Nakashima said that Miller received a letter of instruction for failing to notify IAB and failing to take or make a report. Rodriguez received a Schedule B Command Discipline for failing to make entries in her Activity Log. Police Officer Shanaski received a Schedule B Command Discipline for omitting entries in his Activity Log.

Nakashima said she could not recall if she told Phin what the results of the investigation were, but she told her she would receive a report. Phin advised her that she wanted to sue the Department and/or get a transfer from housing, so she requested a report about her house being "robbed." Nakashima informed Phin that since she (Nakashima) was investigating the missing property allegation and whether the officers stole it, if Phin wanted a burglary report, Nakashima would have to close the current case. Phin refused stating that the officers stole the items. Nakashima then refused to give her the complaint report because they were continuing the investigation.

When questioned about her investigation, Nakashima stated that [REDACTED] was one of the three housing workers that she interviewed. [REDACTED] was plastering or painting the apartment adjoining Phin's apartment. He noticed on May 18 that the hasp on Phin's lock was broken.¹ That same day, he informed the superintendent of the building, [REDACTED], who in turn notified the police. Once the police arrived, [REDACTED] had the installer, [REDACTED], come to the building and install the lock. Police Officers Tavares and Richards were assigned to the housing sector when they responded to a job of a past burglary. When they arrived at the Phin residence, they tried a call back number, but were unable to reach anyone. They did speak to a neighbor who advised them that the resident had been evicted and people kept coming around and knocking on the doors. Nakashima stated that the two police officers also witnessed the lock being placed on the door.

Nakashima explained that anytime a member of the service receives an allegation against another member of the service, he or she must contact IAB. She said informing a supervisor does not negate the officer's obligation to contact IAB.

During cross-examination, Nakashima acknowledged that a search warrant was executed at Phin's apartment and a gun and drugs were recovered. She also acknowledged that both Phin and her children's father, Person A were both arrested. She agreed that Police Officer Collazo executed the valid search warrant and that the lock was broken to gain access to the apartment; and a padlock was placed on the apartment as standard procedure. Nakashima stated that she never interviewed anyone who executed the search warrant. She explained that the housing manager [REDACTED] stated that when the officers finished the search warrant, they safely secured the

¹ A hasp is a hinged fastener for a door that is passed over a staple and secured by a pin, bolt or padlock.

apartment. A day later, it was discovered that the lock was broken and there was a possible burglary. Nakashima acknowledged that there may have been a benefit in interviewing the officers who executed the search warrant to ascertain whether they saw the stolen items such as the TVs, cell phone and bank card in the apartment when they executed the warrant.

Nakashima did not know that the key to Phin's apartment had been incorrectly vouchered as arrest evidence rather than for safe keeping. She acknowledged that she reviewed the 911 call made by Phin where she states that her home was raided the day before and items were missing from her apartment. Nakashima acknowledged that Collazo and/or whoever else executed the search warrant would have to report to the judge by way of a voucher as to what was taken from the apartment, yet she never spoke to Collazo or anyone else from the search warrant team to establish what was removed from the apartment.

Nakashima also acknowledged that there was an inconsistency in her report. It stated that the hasp to the lock was broken and had to be replaced, and keys were given to the responding officers. She explained that a hasp is a metal plate that a lock attaches to. She agreed that if a hasp was replaced, keys may not be generated, yet she did not confirm with the responding officers whether they received keys. She stated that they did not voucher keys.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent is a 17-year member of the Department currently assigned to Patrol Borough Bronx Evidence Collection. Prior to that he was assigned to the 42 Precinct since 1999. On May 19, 2012, Respondent was working from 7:05 a.m. to 3:40 p.m. as the TS operator. He did not know why he received that assignment on that date but noted that he had worked that position previously. He recalled that it was a rare assignment and he only had it for one day on May 19, 2012.

Respondent testified that when he actually met Phin, she had a voucher in her possession. She explained that when she was released from Central Booking, the night before, she went to the station house, but the officers there at that time were unable to help her obtain her house key. Respondent then searched the vouchers and when he found one that erroneously had keys as arrest evidence, he gave it to the desk to be returned to Phin.

Respondent denied having any further contact with Phin after she received her keys. He stated that he could not tell her anything about what was vouchered with respect to the search warrant because that was confidential information. He would have directed her to the arresting officer who was familiar with the case; or advised her to contact her lawyer who could contact the Assistant District Attorney. Respondent also stated that any IAB allegations or Civilian Complaint Review Board (CCRB) allegations presented to him while he was working as the TS operator, would be turned over to the desk officer. He explained that he was familiar with the Patrol Guide section that addressed this issue.

Respondent said he was questioned by IAB and did not know why he was there. He was shown a picture of Phin and explained what happened with her the night before at the precinct when officers simply looked at the arrest evidence and told her that they could not help her. Respondent said he did not just look at the arrest evidence, but went through all of the vouchers in the command until he found Phin's keys.

Respondent described himself as a white male with a shaved head on May 19, 2012. He indicated that there was a possibility that Phin was mistaking her conversations with him for the other TS operator who worked right before his tour into the morning. Respondent said that Police Officer Castido, was also a white male about his height with a shaved head.

During cross-examination, Respondent acknowledged the testimony of Phin stating that she received a call from Respondent to come and get her keys. Respondent did not recall making that call to Phin. When questioned as to whether he received Phin's ID and verified her identity, Respondent said only the sergeant, Sergeant Miller, would have taken the ID and made the Command Log entry because police officers do not touch the Command Log.

FINDINGS AND ANALYSIS

Failure to Notify IAB Regarding an Allegation of Corruption/Misconduct Involving a Member of the Service

On May 19, 2012, Respondent was working as the telephone switchboard (TS) operator in the 42 Precinct Station House. The Patrol Guide, specifically §207-21

[Allegations of Corruption and Other Misconduct Against Members of the Service],
which is controlling in this matter, states in no uncertain terms:

Note To prevent interruption or delay in vital services, a telephone switchboard operator will refer any allegation of corruption or other misconduct to the desk officer, who will record the details of the allegation(s).

In addition, Patrol Guide §207-31 [Processing Civilian Complaints] also controlling reiterates:

Note To prevent an interruption or delay in vital services, the telephone switchboard operator will refer an allegation of misconduct to the desk officer who will record pertinent details of the allegation.

In this instance, either Respondent or the other TS operator conferred with the desk officer regarding Phin's concerns that a search warrant had been executed in her apartment, that items were missing from her apartment and that she suspected that the two officers who remained in her apartment following the search warrant execution may have had something to do with it. Once the desk officer received this information from the TS operator, the desk officer had a duty to record the details of the allegation from Phin. Instead, the desk officer told the TS operator that he did not want to deal with this matter; and this was overheard by Phin. He then directed the TS operator to give Phin the number to IAB. The TS operator handed her a piece of paper with the number to IAB on it. She did not know what IAB was, so the TS operator explained it to her and told her to call that number if she felt that the officers had something to do with her missing property.

In the end, the desk sergeant was punished for his lack of action in this instance. Sergeant Miller received a letter of instruction for failing to notify IAB and failing to take a report. To then hold his subordinate, Respondent, or some other TS operator,

responsible for a higher level of misconduct involving Charges and Specifications when he reported it to his superior first for guidance is without justification. To hold Respondent to any other standard when the Patrol Guide is specific on this issue, would not put Respondent or any other TS operator on notice as to how he is supposed to perform his duties while working the TS. In addition, Respondent is a police officer who takes orders from the desk sergeant. Respondent's responsibility is to obey the commands he receives while working at the Police Department. Whether the TS operator Phin communicated with was Respondent or his predecessor makes no difference. Respondent denied communicating with the desk officer Miller; or handing the number to IAB by order of Miller to Phin. Respondent testified that the TS operator who he relieved that morning was also a bald-headed white male like himself and Phin may have mistaken him for Respondent. The TS operator is not responsible to handle corruption allegations, the desk officer is responsible and neither Respondent nor his predecessor TS operator would be held accountable in this instance.

It must be noted that Respondent fully performed his TS responsibilities in his attempt to provide assistance to Phin. She first attempted to get the keys to her apartment following her release from police custody after the search warrant execution. Respondent searched the command evidence related to the search warrant execution and ascertained that Phin's keys were erroneously vouchered as arrest evidence rather than for safe keeping. He saw to it that the keys were then properly retrieved and that the keys were later returned to Phin who thanked him for it.

It must also be noted that Respondent was in a precarious situation in that he was aware that a search warrant was issued at Phin's home and that evidence was seized. He

could very well compromise the integrity of the case by releasing too much information to Phin and not conferring with a supervisor. Either he or his predecessor TS operator conferred with a supervisor because Phin corroborated this account, and followed the supervisor's direction. For this there is no basis to charge Respondent with misconduct. This is despite the testimony of IAB supervisor Lieutenant Nakashima who testified before this Court that if Phin questioned Respondent about all seized items, he had a duty to disclose all of that information to Phin about what was taken and vouchered from her apartment irrespective of whether there was a continuing police investigation going on with someone else who was the arresting officer. Respondent was not at liberty to disclose this information to Phin, particularly since there was an ongoing criminal investigation not involving Respondent.

The Patrol Guide goes on to state the concerns with failing to report corruption, by covering up acts, preventing or discouraging the report, or intimidating those who will report the corruption. Respondent engaged in no such misconduct during his encounter with Phin. It is also telling that when Phin did get in touch with IAB regarding her allegation, IAB under the direction of Nakashima told Phin that if she wanted to file a complaint report on the burglary, the investigation into her missing property complaint and whether the officers stole it would be halted and Phin, logically chose not to halt the investigation.

Nakashima agreed that Phin initially did not make an allegation of burglary against the officers. Phin also sought to receive a complaint that her apartment had been broken into because she wanted to be moved to another apartment in housing for safety reasons. However, Phin testified credibly before this Court that every time she attempted

to obtain a complaint report from IAB, Nakashima told her that she could not since she made allegations against police officers. Thus, Phin's allegation was against IAB not taking her complaint, not Respondent. To then go back and attempt to hold Respondent accountable for failing to contact IAB about an allegation of corruption or misconduct against a member of the service when his supervisor was already held accountable; and even when IAB was made aware, took no action, including failing to interview the officers who executed the search warrant in Phin's home, is disingenuous at best.

Accordingly, Respondent is found Not Guilty of Specification No. 1.

Failure to Take a Complaint Report After Receiving an Allegation of a Possible Burglary

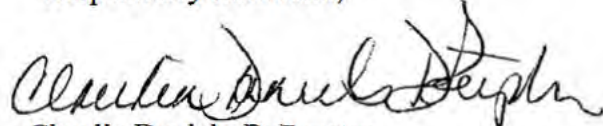
The Assistant Department Advocate moved to dismiss this allegation at the commencement of the proceeding.

Accordingly, it is recommended that Specification No. 2 be dismissed.

Respectfully submitted,

APPROVED
MAR 26 2018

WILLIAM J. BRATTON
POLICE COMMISSIONER


Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials